

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of	)	MM Docket No. 99-153
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of	)	
Station WTVE(TV), Channel 51	)	
Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS	)	File No. BPCT-940630KG
CORPORATION	)	
	)	
For Construction Permit for a New	)	
Television Station to Operate on	)	
Channel 51, Reading, Pennsylvania	)	
	)	
To: Administrative Law Judge		
Richard L. Sippel		

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JUL 29 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MASS MEDIA BUREAU'S COMMENTS ON PRELIMINARY MOTIONS

1. By *Order*, FCC 99M-42, the applicants in this proceeding were directed to file by July 22, 1999, motions which addressed two issues: 1) the current evidentiary criteria for the adjudication of the standard comparative issue; and 2) the relevant time period for determining a renewal expectancy for Reading Broadcasting, Inc. ("RBI"). The Order also directed the Mass Media Bureau to comment on the applicants' submissions by July 29, 1999. The Bureau comments as follows.

2. Standard comparative issue. In Amendment of Parts 1, 73 and 74 – Competitive Bidding, 13 FCC Rcd 15920 (1998) ("Amendment of Part 73"), the Commission opted to use a comparative hearing to resolve a contest between a renewal applicant and a mutually exclusive challenger. However, in doing so the Commission

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declined to develop a revised set of comparative criteria or to establish a revised weighting system without reference to integration. Instead, the Commission decided to permit “renewal applicants and their challengers, within the confines of the generally phrased standard comparative issue, to present the factors and evidence they believe most appropriate.” Amendment of Part 73, 13 FCC Rcd at 16006.

3. RBI advocates that six areas are relevant: diversification of media outlets; comparative coverage;<sup>1</sup> local residence; civic involvement; broadcast experience; and specialized programming. In this regard, RBI recognizes that local residence, local civic involvement and broadcast experience have been regarded as qualitative enhancement factors for principals proposed to be integrated into station management. RBI further recognizes, however, that the integration criterion was invalidated in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993) (“Bechtel”). Nevertheless, RBI insists that the noted enhancement factors were not found to be arbitrary but were viewed favorably by the court. Moreover, according to RBI, all three factors tend to foster an awareness of community needs and/or place an owner in a position to better serve community needs. RBI also contends none of the enhancement factors are “predictive in nature” but are verifiable. As for specialized programming, RBI acknowledges that, historically, the Commission has considered such pursuant to a specially designated issue, and it relates that it has simultaneously filed a motion to enlarge, which seeks to add a specialized programming issue. In any event, considering the Commission’s general directive that applicants be allowed to present factors they believe most appropriate, RBI believes that

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<sup>1</sup> With regard to comparative coverage, RBI requests that the parties be allowed to present evidence as to whether a party will actually carry out its claims.

evidence concerning WTVE(TV)'s Spanish-language programming should be considered.

4. Adams Communications Corporation ("Adams") insists that Bechtel bars comparative consideration of the applicants' respective management structures, or the local, civic or broadcast backgrounds of the applicants' principals. Adams views as relevant a party's past broadcast record that was unusually good or poor inasmuch as this criterion is based on actual performance. Adams also deems relevant the factors of diversity and efficient use of the frequency. Finally, it appears that Adams accepts that evidence related to a license renewal expectancy is relevant.

5. Discussion. Initially, the Bureau finds acceptable the factors that the applicants agree are relevant. Thus, under the standard comparative issue, both diversification and comparative coverage (or efficient use of the frequency) should be considered. With respect to an applicant's history, RBI refers to "broadcast experience" while Adams uses the term "past broadcast record." The basic idea behind both appears to be that demonstrated performance in broadcasting can be relevant in determining whether an applicant will operate in the public interest. Cf. Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1183 (1986) (subsequent history omitted) ("Character Policy Statement") ("future inquiries into an applicant's basic character eligibility will be narrowed to focus on the likelihood that an applicant will deal truthfully with the Commission and comply with the Communications Act and our rules and policies.") In this regard, however, the Bureau believes that consideration of an applicant's principals' past broadcast record, if unusually good or poor, is more likely to assist the decision-maker in the ultimate choice, than a more general review of

their broadcast experience. *See Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 396, 398 (1965) (Previous broadcast experience “will be deemed of minor significance,” while a past broadcast record is viewed as a “factor of substantial importance.”) Thus, evidence regarding the past broadcast records of Adams’ principals should be received. However, with respect to RBI, inasmuch as its immediate past record will be considered in analyzing its entitlement to a renewal expectancy, it should be unnecessary to consider separately the past broadcast record of its principals. With respect to local residence and civic involvement, the Bureau agrees with Adams that Bechtel’s disavowal of the integration criterion necessarily renders questionable reliance on local residence and civic involvement as relevant factors. Finally, as for the factor of specialized programming, the Bureau believes that, absent a grant of RBI’s motion to enlarge, consideration of RBI’s programming should occur only in conjunction with the renewal expectancy for WTVE(TV).

6. Relevant Period for Renewal Expectancy. Both RBI and Adams agree that August 1, 1994, the final date for the most recent license term, should be the end date for consideration of RBI’s renewal expectancy. The Bureau concurs. The applicants disagree, however, as to the appropriate beginning date. RBI submits that the relevant term begins on March 12, 1992, the date RBI consummated the transfer of control of the station from its predecessor, Reading Broadcasting, Inc., debtor-in-possession (“RBI/dip”). Adams submits that the appropriate date is either August 1, 1989, when the license term began, or February 10, 1992, when the station’s 1989 renewal application was granted.<sup>2</sup> Both applicants cite Fox Television Stations, Inc., 7 FCC Rcd 3801 (ALJ

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<sup>2</sup> As discussed herein, Adams favors the earlier date. *See Intercontinental Radio, Inc.*, 100 FCC 2d 817, 819 (1985).

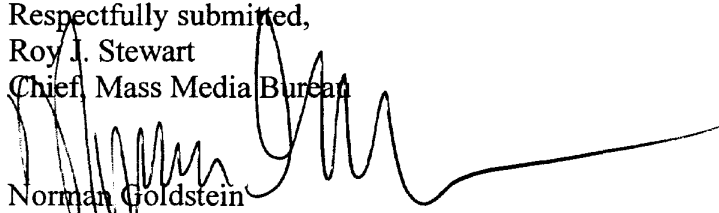
1992) for the proposition that the relevant period begins when a “new” party takes control of the station. Where the parties differ is whether RBI is a new party.


7. RBI points to two factors that support its contention that it is a new party. The first is that its predecessor (RBI/dip) was in bankruptcy under Chapter 11 of the Bankruptcy Code and, hence, under the supervision of a federal bankruptcy court, and subject to financial limitations imposed by the Code. The second is that when RBI emerged from bankruptcy, there was a greater than 50% change in ownership. Adams disagrees that RBI is a new party. Adams points out that many of RBI’s current stockholders held stock in RBI/dip, and that Micheal Parker (“Parker”), now the controller of RBI’s largest block of stock, was the key principal in the operation of the station since August 1, 1989. In this regard, Adams cites to a “Management Services Agreement.” That agreement began June 1, 1989, and provided for Parker to serve as the chief operating officer of RBI/dip (see Agreement at para. 3) and gave Parker, through his solely owned company, Partel, Inc., the right to acquire the largest block of RBI/dip stock. Moreover, Adams notes that since as early as January 16, 1990, Parker has identified himself as the president of RBI/dip (and RBI).

8. Discussion. Although a close call, the Bureau believes that RBI has the more persuasive position at this point in time. In this regard, Adams’ position is based on the supposition that Parker had operational control of the station throughout from August 1, 1989, through August 1, 1994. However valid that theory may be, it is clear that until RBI/dip was discharged from bankruptcy, it was constrained to heed the directives of the bankruptcy court. Accordingly, the Bureau agrees with RBI that the relevant period for

consideration should begin with the date RBI obtained control of Station WTVE(TV)  
from RBI/dip.

Respectfully submitted,  
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July 29, 1999

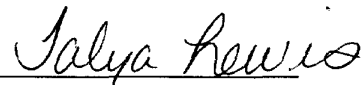
CERTIFICATE OF SERVICE

Talya Lewis, secretary of the Mass Media Bureau's Complaints and Political Programming Branch certifies that she has on this 29<sup>th</sup> day of July, 1999, sent by first class United States mail (or by hand) copies of the foregoing "Mass Media Bureau's Comments" to:

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